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## Minnesota Open Meeting Law

The Minnesota Open Meeting Law<sup>1</sup> requires that meetings of governmental bodies generally be open to the public. The Minnesota Supreme Court has articulated three purposes of the law:

- ▶ to prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning board decisions or to detect improper influences;
- ▶ to assure the public's right to be informed; and
- ▶ to afford the public an opportunity to present its views to the public body.<sup>2</sup>

This information brief discusses the groups and types of meetings covered by the open meeting law, and then reviews the requirements of and exceptions to the law and the penalties for its violation.

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<sup>1</sup> Minn. Stat. § 471.705. The Minnesota Open Meeting Law was originally enacted in 1957.

<sup>2</sup> *Claude v. Collins*, 518 N.W.2d 836, 841 (Minn. 1994) (citing *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d 1, 4 (Minn.1983))

## Groups and Meetings Governed by the Open Meeting Law

### **The law applies to all levels of state and local government.**

The open meeting law applies to:

- ▶ a state agency, board, commission, or department when it is required or permitted by law to transact public business in a meeting;
- ▶ the governing body of any school district, unorganized territory, county, city, town, or other public body;
- ▶ committee, subcommittee, board, department, or commission of a public body subject to the law.<sup>3</sup>

### **The law generally does not apply to nonprofit corporations created by governmental entities.**

The list of groups covered by the open meeting law does not refer to nonprofit corporations, even those created by the legislature. However, the law creating a specific nonprofit corporation may specify that it is subject to the open meeting law.<sup>4</sup>

In determining whether the open meeting law applies to a particular entity, one should look at all of the entity's characteristics. For example, in a recent case, the Minnesota Supreme Court held that because the statute authorizing creation of a municipal power agency authorized an agency to conduct its affairs as a private corporation, it could hold closed meetings.<sup>5</sup> The court held so notwithstanding the statute that provides for municipal power agencies to be political subdivisions of the state.<sup>6</sup>

A 1986 attorney general opinion stated that the open meeting law does not apply to nonprofit corporations created by political subdivisions, even if they are funded primarily with public

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<sup>3</sup> [Minn. Stat. § 471.705, subd. 1, ¶ \(a\)](#)

<sup>4</sup> *E.g.*, [Minn. Stat. §§ 17.987, subd. 3, ¶ \(c\)](#) (Market Champ, Inc.); 116J.693, subds. 2 and 3 (Advantage Minnesota, Inc.); 116O.03, subd. 5 (Minnesota Technology, Inc.); 116O.09, subd. 9 (Agricultural Utilization Research Institute); 116S.02, subds. 6 and 7 (Minnesota Business Finance, Inc.)

<sup>5</sup> *Southern Minnesota Mun. Power Agency v. Boyne*, 578 N.W.2d 362, 364 (Minn. 1998) (citing Minn. Stat. § 453.54, subd. 21, and discussing the factors that distinguish a public corporation from a private corporation)

<sup>6</sup> [Minn. Stat. § 453.53, subd. 1, ¶ \(1\)](#) (The agency agreement shall state: “(1) That the municipal power agency is created and incorporated . . . as a municipal corporation and a political subdivision of the state, to exercise thereunder a part of the sovereign powers of the state;”)

money, are appointed by public officials, and perform services exclusively for governmental units.<sup>7</sup> The nonprofit corporation involved in this opinion was organized by several counties to operate a mental health service program for the counties. This opinion clearly would not apply to nonprofit corporations that the legislature has stated are covered by the open meeting law. The 1999 Legislature established a task force to recommend legislation in 2000 governing corporations created by political subdivisions.<sup>8</sup> The recommendations may include whether such corporations should be subject to laws such as the open meeting law.

**Gatherings of less than a quorum of a public body are not subject to the law; a “meeting” is held when the group is capable of exercising decision-making powers.**

The Minnesota Supreme Court has held that the open meeting law applies only to a quorum or more of members of the governing body or a committee, subcommittee, board, department, or commission of the governing body.<sup>9</sup> Serial meetings in groups of less than a quorum held in order to avoid open meeting law requirements may also be found to be a violation, depending on the facts of the case.<sup>10</sup>

In another more recent case, the Minnesota Court of Appeals held that the open meeting law was not violated when two of five city council members attended private mediation sessions related to city business. The court determined that the two council members did not constitute a committee or subcommittee of the council because the group was not capable of exercising decision-making powers.<sup>11</sup>

**The law applies to informational meetings.**

The Minnesota Supreme Court has held that the open meeting law applies to all gatherings of members of a governing body, regardless of whether or not action is taken or contemplated. Thus, a gathering of members of a public body for an informational seminar on matters currently

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<sup>7</sup> Op. Att’y Gen. 92a-30, Jan. 29, 1986

<sup>8</sup> [Laws 1999, ch. 186](#)

<sup>9</sup> *Moberg v. Independent School Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983)

<sup>10</sup> *Id.* at 518; *see also Mankato Free Press, Inc. v. City of North Mankato*, 563 N.W.2d 291, 295 (Minn. App. 1997). On remand to the district court for a factual finding on whether the city used serial interviews to avoid the open meeting law, the trial court found, and the court of appeals affirmed, that the serial meetings were not held to avoid the law. *Mankato Free Press, Inc. v. City of Mankato*, 1998 WL 865714 (Minn. App. 1998) (unpublished opinion).

<sup>11</sup> *Sovereign v. Dunn*, 498 N.W.2d 62 (Minn. App. 1993)

facing the body or that might come before the body must be conducted openly.<sup>12</sup> However, a 1975 attorney general opinion stated that city council attendance at a League of Minnesota Cities training program for city officials did not violate the open meeting law if the members did not discuss specific municipal business.<sup>13</sup>

### **The law does not cover chance or social gatherings.**

The open meeting law does not apply to chance or social gatherings of members of a public body.<sup>14</sup> However, a quorum of a public body may not, as a group, discuss or receive information on official business in any setting under the guise of a private social gathering.<sup>15</sup>

### **The law does not apply to certain types of advisory groups.**

The Minnesota Court of Appeals has held that the open meeting law does not apply to certain types of advisory groups.<sup>16</sup> In that case, a presidential search advisory committee to the Board of Regents was held not to be a committee of the governing body (the University Board of Regents) for purposes of the open meeting law. In reaching its holding, the court pointed out that no regents were on the search committee, and that the committee had no power to set policy or make a final decision. It is not clear if a court would reach the same result if members of the governing body were also on the advisory committee. Depending on the number of members of the governing body involved and on the form of the delegation of authority from the governing body to the members, a court might consider the advisory committee to be a committee of the governing body.

### **A separate law applies to the legislature.**

In 1990 the legislature passed a law, separate from the open meeting law, requiring that all legislative meetings be open to the public.<sup>17</sup> The law applies to House and Senate floor sessions, and to meetings of committees, subcommittees, conference committees, and legislative commissions. For purposes of this law, a meeting occurs when a quorum is present and action is taken regarding a matter within the jurisdiction of the group. Each house of the legislature must

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<sup>12</sup> *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983)

<sup>13</sup> Op. Att'y Gen. 63a-5, Feb. 5, 1975

<sup>14</sup> *St. Cloud Newspapers, Inc.*, 332 N.W.2d at 7

<sup>15</sup> *Moberg*, 336 N.W.2d at 518

<sup>16</sup> *The Minnesota Daily v. University of Minnesota*, 432 N.W.2d 189 (Minn. App. 1988)

<sup>17</sup> [Minn. Stat. § 3.055](#)

adopt rules to implement these requirements. Remedies provided under these rules are the exclusive means of enforcing this law.

## Requirements of the Open Meeting Law

**The primary requirement of the open meeting law is that meetings be open to the public.**

The law also requires that votes in open meetings be recorded in a journal, and that the journal be open to the public. The vote of each member must be recorded on appropriations of money, except for payments of judgments and claims and amounts fixed by statute.<sup>18</sup> A straw ballot to narrow the list of candidates for city administrator and not made public was held to be a secret vote in violation of the open meeting law.<sup>19</sup>

Meetings may be held by interactive television if specified conditions are met to ensure openness and accessibility for those who wish to attend.<sup>20</sup> The Rural Finance Agency and the Minnesota Housing Finance Agency have broader authority to hold meetings by telephone conference call or other electronic means as long as specified conditions are met to ensure openness and accessibility for those who wish to attend.<sup>21</sup>

**The law requires public bodies to give notice of their meetings.**

In 1974, the Minnesota Supreme Court held that failure to give notice of a meeting is a violation of the open meeting law.<sup>22</sup> The court has also held that it is a violation of the open meeting law to conduct business before the time publicly announced for a meeting.<sup>23</sup>

In 1987, the legislature spelled out the notice requirements in statute for regular, special, emergency, and closed meetings. Public bodies must:

- ▶ keep schedules of regular meetings on file at their offices.<sup>24</sup>

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<sup>18</sup> Minn. Stat. § 471.705, subd. 1, ¶ (a)

<sup>19</sup> *Mankato Free Press Co.*, 563 N.W.2d at 295-96

<sup>20</sup> Minn. Stat. § 471.705, subd. 1, ¶ (b)

<sup>21</sup> Minn. Stat. §§ 41B.026, 462A.041

<sup>22</sup> *Sullivan v. Credit River Township*, 299 Minn. 170, 174, 217 N.W.2d 502 (Minn. 1974)

<sup>23</sup> *Merz v. Leitch*, 342 N.W.2d 141, 145 (Minn. 1984)

<sup>24</sup> Minn. Stat. § 471.705, subd. 1c, ¶ (a)

- ▶ post notice of special meetings (meetings held at a time or place different for regular meetings) on their principal bulletin board. The public body must also either mail notice to people who have requested such mailings, or publish notice in the official newspaper, at least three days before the meetings.<sup>25</sup>
- ▶ make good faith efforts to notify news media that have filed written requests (with telephone numbers) for notice of emergency meetings (special meetings called because of circumstances that require immediate consideration).<sup>26</sup>

For state agencies, absent any other specific law governing notice, publication requirements can be satisfied by publishing notice in the State Register.<sup>27</sup>

### **The law requires public availability of relevant materials.**

The open meeting law requires that for open meetings, at least one copy of any printed material prepared by the public body and distributed or available to all members of the public body also be available in the meeting room for inspection by the public. This requirement does not apply to materials that are classified as other than public under the Government Data Practices Act.<sup>28</sup>

## **Exceptions to the Open Meeting Law**

### **The law does not apply to state agency disciplinary hearings.**

The open meeting law does not apply to any state agency, board, or commission when exercising quasi-judicial functions involving disciplinary hearings.<sup>29</sup>

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<sup>25</sup> [Minn. Stat. § 471.705, subd. 1c, ¶ \(b\)](#); *Rupp v. Mayasich*, 533 N.W.2d 893 (Minn. App. 1995) (bulletin board must be reasonably accessible to the public)

<sup>26</sup> [Minn. Stat. § 471.705, subd. 1c, ¶ \(c\)](#)

<sup>27</sup> [Minn. Stat. § 471.705, subd. 1c, ¶ \(f\)](#)

<sup>28</sup> [Minn. Stat. § 471.705, subd. 1b](#)

<sup>29</sup> [Minn. Stat. § 471.705, subd. 1, ¶ \(a\)](#); *see also Zahavy v. University of Minnesota*, 544 N.W.2d 32, 41-42 (Minn. App. 1996)

### **Certain meetings involving employee evaluation or discipline must be closed.**

A public body must close meetings for preliminary consideration of allegations or charges against an individual subject to its authority.<sup>30</sup> If the members of the public body conclude that discipline may be warranted as a result of those charges, further meetings or hearings relating to the charges must be open. Meetings must also be open at the request of the individual who is the subject of the meeting.

Statutes other than the open meeting law may permit or require closed meetings for certain local governmental bodies to conduct specific kinds of disciplinary hearings. For example, school board hearings held to discharge or demote a teacher are private unless the affected teacher wants a public hearing.<sup>31</sup>

A public body may close a meeting to evaluate the performance of an individual who is subject to its authority.<sup>32</sup> Before closing a meeting, the public body must identify the individual to be evaluated. The public body must summarize the conclusions of the evaluation at its next open meeting. An evaluation meeting must be open at the request of the subject of the meeting.

### **Meetings concerning labor negotiations may be closed.**

The open meeting law permits a public body to hold a closed meeting to discuss strategy and proposals for labor negotiations conducted under the Public Employment Labor Relations Act.<sup>33</sup> The statute specifies procedures for tape recording of these meetings, and for the recordings to become public when negotiations are completed. Another law permits the Commissioner of the Bureau of Mediation Services to close negotiations and mediation sessions between public employers and public employees. These negotiations are public meetings, unless the commissioner closes them.<sup>34</sup>

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<sup>30</sup> [Minn. Stat. § 471.705, subd. 1d, ¶ \(c\)](#)

<sup>31</sup> [Minn. Stat. § 122A.41, subd. 9](#)

<sup>32</sup> [Minn. Stat. § 471.705, subd. 1d, ¶ \(d\)](#)

<sup>33</sup> [Minn. Stat. § 471.705, subd. 1a](#)

<sup>34</sup> [Minn. Stat. § 179A.14, subd. 3](#)

### **The law permits closed meetings based on the attorney-client privilege.**

In 1976, the Minnesota Supreme Court held that there is a limited exception, based on the attorney-client privilege, for meetings to discuss strategy for active litigation.<sup>35</sup> In 1990, the legislature included the attorney-client exception to the open meeting law.<sup>36</sup> The court of appeals ruled that the exception also applies if litigation over specific facts is imminent, but has not yet been commenced.<sup>37</sup>

The attorney-client privilege exception does not apply to a mere request for general legal advice. Nor does it apply when a governing body seeks to discuss with its attorney the strengths and weaknesses of a proposed enactment that may lead to future lawsuits because that can be viewed as general legal advice. Furthermore, discussion of proposed legislation is just the sort of discussion that should be public.<sup>38</sup>

### **There is a narrow exemption from the open meeting law for certain meetings of public hospital boards.**

Boards of public hospitals and certain health organizations may close meetings to discuss competitive market activities and contracts.<sup>39</sup>

### **There is a limited exception for town board members to perform on-site inspections.**

The law does not apply to a gathering of town board members to perform on-site inspections, if the town has no employees or other staff able to perform the inspections and the town board is acting essentially in a staff capacity. The town board must make good faith efforts to provide notice of the inspections to the media that have filed a written request, including a telephone number, for notice. Notice must be by telephone or by any other method used to notify the members of the public body.<sup>40</sup>

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<sup>35</sup> *Minneapolis Star and Tribune Co. v. Housing and Redevelopment Auth.*, 310 Minn. 313, 251 N.W.2d 620 (1976)

<sup>36</sup> [Minn. Stat. § 471.705, subd. 1d, ¶ \(e\)](#) (added by Laws 1990, ch. 550 § 2)

<sup>37</sup> *Star Tribune v. Board of Ed., Spec. School Dist. No. 1*, 507 N.W.2d 869 (Minn App. 1993). The court of appeals did not accept the argument that the statutory exception encompassed the full attorney-client privilege because that would result in the exception swallowing the rule in favor of open meetings.

<sup>38</sup> *Northwest Publications, Inc. v. City of St. Paul*, 435 N.W.2d 64 (Minn. App. 1989)

<sup>39</sup> [Minn. Stat. § 144.581, subd. 5](#)

<sup>40</sup> [Minn. Stat. § 366.01, subd. 11](#)



### **The law specifies how it relates to the Government Data Practices Act.**

Except as specifically provided, public meetings may not be closed to discuss data that are not public data under the Government Data Practices Act.<sup>41</sup> Data that are not public may be discussed at an open meeting without liability, if the matter discussed is within the public body's authority and if it is reasonably necessary to conduct the business before the public body.<sup>42</sup>

A portion of a meeting must be closed if the following data are discussed.

- ▶ Data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults<sup>43</sup>
- ▶ Active investigative data collected by a law enforcement agency, or internal affairs data relating to alleged misconduct by law enforcement personnel<sup>44</sup>
- ▶ Certain types of educational, health, medical, welfare, or mental health data that are not public data<sup>45</sup>

### **Penalties**

The open meeting law provides a civil penalty of up to \$300 for intentional violation.<sup>46</sup> A person who is found to have intentionally violated the law in three or more legal actions involving the same governmental body forfeits the right to serve on that body for a time equal to the term the person was serving. The Minnesota Supreme Court has held that this removal provision is constitutional, provided that the violations occurred after the person had a reasonable amount of time to learn the responsibilities of office.<sup>47</sup>

A public body may not pay a civil penalty on behalf of a person who violated the law. However, a public body may pay any costs, disbursements, or attorney fees incurred by or awarded against a member of the body in an action under the open meeting law.

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<sup>41</sup> Minn. Stat. § 471.705, subd. 1d, ¶ (a)

<sup>42</sup> Minn. Stat. §§ 13.03, subd. 11, 13.05, subd. 4, ¶ (e), and 471.705, subd. 1d

<sup>43</sup> Minn. Stat. § 471.705, subd. 1d, ¶ (b)(1)

<sup>44</sup> Minn. Stat. § 471.705, subd. 1d, ¶ (b)(2)

<sup>45</sup> Minn. Stat. § 471.705, subd. 1d, ¶ (b)(3)

<sup>46</sup> Minn. Stat. § 471.705, subd. 2

<sup>47</sup> *Claude v. Collins*, 518 N.W.2d 836, 843 (Minn. 1994)

A court may award reasonable costs, disbursements, and reasonable attorney fees of up to \$13,000 to any party in an action under the open meeting law. However

- ▶ A court may award costs and attorney fees to a defendant only if it finds that the action was frivolous and without merit.
- ▶ A court may award monetary penalties or attorney fees against a member of a public body only if the court finds there was specific intent to violate the open meeting law.

The appropriate mechanism to enforce the open meeting law is to bring an action in district court seeking injunctive relief or damages. The statute does not provide for a declaratory judgment action.<sup>48</sup>

The Minnesota Supreme Court has held that actions taken at a meeting held in violation of the open meeting law are not invalid or rescindable.<sup>49</sup>

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<sup>48</sup> *Rupp v. Mayasich*, 561 N.W.2d 555 (Minn. App. 1997)

<sup>49</sup> *Sullivan v. Credit River Township*, 299 Minn. 170, 176-177, 217 N.W.2d 502, 507 (Minn. 1974)